As early as 1850, admiralty scholars began to suggest that a traditional maritime activity, as well as a maritime locality, is necessary to invoke admiralty jurisdiction over torts. In that year, Judge Benedict expressed his "celebrated doubt" [7] as to whether such jurisdiction did not depend, in addition to a maritime locality, upon some "relation of the parties to a ship or vessel, embracing only those tortious violations of maritime right and duty which occur in vessels to which Admiralty jurisdiction, in cases of contracts, applies." Benedict, The Law of American Admiralty 173 (1850). More recently, commentators have actively criticized the rule of locality as the sole criterion for admiralty jurisdiction, and have recommended adoption of a maritime relationship requirement as well. See 7A Moore, Federal Practice, Admiralty, ¶ .325 [3] and ¶ .325 [5];

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because the injury occurred in shallow waters along the shore than if the injury had occurred on the sandy beach above the water line. Whether the City of New York should be held liable for the injury suffered by libellant is a question which can easily be determined in the courts of the locality. To endeavor to project such an action into the federal courts on the ground of admiralty jurisdiction is to misinterpret the nature of admiralty jurisdiction."

Other cases holding that admiralty jurisdiction was not properly invoked because the tort, while having a maritime locality, lacked a significant relationship to maritime navigation and commerce, include: *Peytavin* v. *Government Employees Insurance Co.*, 453 F. 2d 1121 (CA5 1972); *Gowdy* v. *United States*, 412 F. 2d 525, 527–529 (CA6 1969); *Smith* v. *Guerrant*, 290 F. Supp. 111, 113–114 (SD Tex. 1968). See also *J. W. Peterson Coal & Oil Co.* v. *United States*, 323 F. Supp. 1198, 1201 (ND Ill. 1970); *O'Connor and Co.* v. *City of Pascagoula, Miss.*, 304 F. Supp. 681, 683 (SD Miss. 1969); *Hastings* v. *Mann*, 226 F. Supp. 962, 964–965 (EDNC 1964), aff'd, 340 F. 2d 910 (CA4 1965). A similar view is taken by the English courts. *The Queen* v. *The Judge of the City of London Court*, 1 Q. B. 273 (1892).

[7] Hough, Admiralty Jurisdiction—Of Late Years, 37 Harv. L. Rev. 529, 531 (1924).

Black, Admiralty Jurisdiction: Critique and Suggestions, 50 Colum. L. Rev. 259, 264 (1950). In 1969, the American Law Institute's Study of the Division of Jurisdiction Between State and Federal Courts ("ALI Study") also made that recommendation, stating (at p. 233):

> "It is hard to think of any reason why access to federal court should be allowed without regard to amount in controversy or citizenship of the parties merely because of the fortuity that a tort occurred on navigable waters, rather than on other waters or on land. The federal courts should not be burdened with every case of an injured swimmer."

Despite the broad language of cases like *The Plymouth*, *supra*, the fact is that this Court has never explicity held that a maritime locality is the sole test of admiralty tort jurisdiction. The last time the Court considered the matter, the question was left open. *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52 (1914). In that case, a stevedore brought suit for injuries sustained on board a vessel while loading and stowing copper. The petitioner admitted the maritime locality of the tort, but contended that no maritime relationship was present. The Court sustained federal admiralty jurisdiction, but found that it was not necessary to decide whether locality alone is sufficient:

> "Even if it be assumed that the requirement as to locality in tort cases, while indispensable, is not necessarily exclusive, still in the present case the wrong which was the subject of the suit was, we think, of a maritime nature and hence the District Court, from any point of view, had jurisdiction. . . .
>
> "If more is required than the locality of the wrong in order to give the court jurisdiction, the relation of the wrong to maritime service, to navi-

> gation and to commerce on navigable waters, was quite sufficient." 234 U. S., at 61, 62.

Since the time of that decision the Court has not squarely dealt with the question left open there, although opinions in several cases have discussed the maritime or non-maritime nature of the tort and its relationship to maritime navigation. In *Rodrigue* v. *Aetna Casualty & Surety Co.*, 395 U. S. 352 (1969), for instance, we held that admiralty had no jurisdiction of wrongful death actions under the Death on the High Seas Act, 46 U. S. C. § 761 *et seq.*, arising out of accidents on artificial island drilling rigs in the Gulf of Mexico more than a marine league off shore. We relied in that case on the fact that the accidents bore no relation to any navigational function:

> "The accidents in question here involved no collision with a vessel, and the structures were not navigational aids. They were islands, albeit artificial ones, and the accidents had no more connection with the ordinary stuff of admiralty than do accidents on piers." 395 U. S., at 360.

See also *The Raithmoor*, 241 U. S. 166, 176–177 (1916); *Chelentis* v. *Luckenbach Steamship Co.*, 247 U. S. 372, 382 (1918); *Great Lakes Dredge and Dock Co.* v. *Kierejewski*, 261 U. S. 479, 481 (1923); *Robins Dry Dock and Repair Co.* v. *Dahl*, 266 U. S. 449, 457 (1925); *London Guarantee and Accident Co.* v. *Industrial Accident Commission*, 279 U. S. 109, 123 (1929).

Apart from the difficulties involved in trying to apply the locality rule as the sole test of admiralty tort jurisdiction, another indictment of that test is to be found in the number of times the federal courts and the Congress, in the interests of justice, have had to create exceptions to it in the converse situation—*i. e.*, when the tort has no maritime locality, but does bear a relationship to maritime service, commerce, or navigation.

See 7A Moore, Federal Practice, Admiralty ¶ .325 [4]. For example, in *O'Donnell* v. *Great Lakes Dredge and Dock Company,* 318 U. S. 36 (1943), the Court sustained the application of the Jones Act, 46 U. S. C. § 688, to injuries to a seaman on land, because of the seaman's connection with maritime commerce. We relied in that case on an analogy to maintenance and cure:

> "[T]he maritime law, as recognized in the federal courts, has not in general allowed recovery for personal injuries occurring on land. But there is an important exception to this generalization in the case of maintenance and cure. From its dawn, the maritime law has recognized the seaman's right to maintenance and cure for injuries suffered in the course of his service to his vessel, whether occurring on sea or on land." 318 U. S., at 41–42.

Similarly, the doctrine of unseaworthiness has been extended to permit a seaman or a longshoreman to recover from a shipowner for injuries sustained wholly on land, so long as those injuries were caused by defects in the ship or its gear. *Gutierrez* v. *Waterman Steamship Corp.,* 373 U. S. 206, 214–215 (1963). See also *Strika* v. *Netherlands Ministry of Traffic,* 185 F. 2d 555 (CA2 1950).

Congress, too, has extended admiralty jurisdiction predicated on the relation of the wrong to martime activities, regardless of the locality of the tort. In the Extension of Admiralty Jurisdiction Act, 46 U. S. C. § 740, enacted in 1948, Congress provided:

> "The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to a person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land."

This Act was passed specifically to overrule cases, such as *The Plymouth, supra,* holding that admiralty does not provide a remedy for damage done to land structures by ships on navigable waters. *Victory Carriers, Inc.* v. *Law,* 404 U. S., at 209 n. 8; *Gutierrez* v. *Waterman Steamship Corp.,* 373 U. S., at 209–210.[8]

In sum, there has existed over the years a judicial, legislative, and scholarly recognition that, in determining whether there is admiralty jurisdiction over a particular tort or class of torts, reliance on the relationship of the wrong to traditional maritime activity is often more sensible and more consonant with the purposes of maritime law than is a purely mechanical application of the locality test.

II

One area in which locality as the exclusive test of admiralty tort jurisdiction has given rise to serious problems in application is that of aviation. For the reasons discussed above and those to be discussed, we have concluded that maritime locality alone is not a sufficient predicate for admiralty jurisdiction in aviation tort cases.

In one of the earliest aircraft cases brought in admiralty, *The Crawford Bros., No. 2,* 215 Fed. 269, 271 (WD Wash. 1914), in which a libel *in rem* for repairs was brought against an airplane that had crashed into Puget Sound, the federal court declined to assume jurisdic-

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[8] The Court has held, however, that there is no admiralty jurisdiction under the Extension of Admiralty Jurisdiction Act over suits brought by longsoremen injured while working on a pier, when such injuries were caused, not by ships, but by pier-based equipment. *Victory Carriers, Inc.* v. *Law, supra; Nacirema Co.* v. *Johnson,* 396 U. S. 212, 223 (1969). The Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C. § 901 *et seq.,* was amended in 1972 to cover employees working on those areas of the shore customarily used in loading, unloading, repairing, or building a vessel. Pub. L. No. 92–576, § 2, 86 Stat. 1251 (1972).

tion, reasoning that an airplane could not be characterized as a maritime vessel. *The Crawford Bros.* was followed by a number of cases dealing with seaplanes, in which the courts restricted admiralty jurisdiction to occurrences involving planes that were afloat on navigable waters.[9] Continuing doubt as to the applicability of admiralty law to aircraft was illustrated by cases in the 1930's and 1940's holding that aircraft owners could not invoke the benefits of the maritime doctrine of limitation of liability,[10] and that crimes committed on board aircraft flying over international waters were not punishable under criminal statutes proscribing acts committed on the high seas.[11] Moreover, Congress exempted all aircraft from conformity with United States navigation and shipping laws.[12]

The first major extension of admiralty jurisdiction to land-based aircraft came in wrongful death actions arising out of aircraft crashes at sea and brought under the Death on the High Seas Act, 46 U. S. C. § 761 *et seq.* The federal courts took jurisdiction of such cases because the literal provisions of that statute appeared to

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[9] *Matter of Reinhardt* v. *Newport Flying Service Corp.*, 232 N. Y. 115, 117–118 (1921); *United States* v. *Northwest Air Service, Inc.*, 80 F. 2d 804, 805 (CA9 1935). See also *Lambros Seaplane Base* v. *The Batory*, 215 F. 2d 228, 231 (CA2 1954).

[10] *Dollins* v. *Pan-American Grace Airways, Inc.*, 27 F. Supp. 487, 488–489 (SDNY 1939); *Noakes* v. *Imperial Airways, Ltd.*, 29 F. Supp. 412, 413 (SDNY 1939).

[11] *United States* v *Peoples*, 50 F. Supp. 462 (ND Cal. 1943); *United States* v. *Cordova*, 89 F. Supp. 298 (EDNY 1950).

In 1952, however, Congress amended the criminal jurisdiction of admiralty to include crimes committed aboard aircraft while in flight over the high seas or any other waters within the admiralty jurisdiction of the United States except waters within the territorial jurisdiction of any State. 18 U. S. C. § 7 (5) (1952).

[12] The Federal Aviation Act of 1958, 72 Stat. 799, as amended, 49 U. S. C. § 1509 (a), the successor to the Air Commerce Act of 1926, 44 Stat. 572, formerly 49 U. S. C. § 177.

be clearly applicable. The Death on the High Seas Act, enacted in 1920, provides:

> "Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representatives of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty . . . ."

The first aviation case brought pursuant to the Death on the High Seas Act was apparently *Choy* v. *Pan-American Airways Co.*, 1941 Am. Mar. Cas. 483 (SDNY 1941), where death was caused by the crash of a seaplane into the Pacific Ocean during a transoceanic flight. The District Court upheld admiralty jurisdiction on the ground that the language of the Act was broad and made no reference to surface vessels. According to the court:

> "The statute certainly includes the phrase 'on the high seas' but there is no reason why this should make the law operable only on a horizontal plane. The very next phrase 'beyond a marine league from the shore of any State' may be said to include a vertical sense and another dimension." 1941 Am. Mar. Cas., at 484.

Since *Choy*, many actions for wrongful death arising out of aircraft crashes into the high seas beyond one marine league from shore have been brought under the Death on the High Seas Act, and federal jurisdiction has consistently been sustained in those cases.[13] Indeed, it may be

[13] See, *e. g.*, *Wyman* v. *Pan-American Airways, Inc.*, 181 Misc. 963, 966, 43 N. Y. S. 2d 420 (Sup. Ct.) aff'd, 267 App. Div. 947, 48 N. Y. S. 2d 459, appeal denied, 293 N. Y. 878, 49 N. Y. S. 2d 271 (1943); *Higa* v. *Transocean Airlines*, 230 F. 2d 780 (CA9 1955);

considered as settled today that this specific federal statute gives the federal admiralty courts jurisdiction of such wrongful death actions.

In recent years, however, some federal courts have been persuaded in aviation cases to extend their admiralty jurisdiction beyond the statutory coverage of the Death on the High Seas Act. Several cases have held that actions for *personal injuries* arising out of aircraft crashes into the high seas more than one league off shore or arising out of aircraft accidents in the airspace over the high seas were cognizable in admiralty because of their maritime locality, although they were not within the scope of the Death on the High Seas Act or any other federal legislation.[14] These cases, as well as most of those brought under the Death on the High Seas Act, involved torts both with a maritime locality, in that the alleged negligence became operative while the aircraft was on or over navigable waters, and also with some relationship to maritime commerce, at least insofar as the aircraft was beyond state territorial waters and performing a function—transoceanic crossing—that previ-

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Noel v. *Linea Aeropostal Venezolana*, 247 F. 2d 677, 680 (CA2 1957); *Trihey* v. *Transocean Air Lines*, 255 F. 2d 824, 827 (CA9 1958); *Lacey* v. *L. W. Wiggins Airways, Inc.*, 95 F. Supp. 916 (Mass. 1951); *Wilson* v. *Transocean Airlines*, 121 F. Supp. 85 (ND Calif. 1954); *Stiles* v. *National Airlines, Inc.*, 161 F. Supp. 125 (ED La. 1958), aff'd, 268 F. 2d 400 (CA5 1959); *Noel* v. *Airponents, Inc.*, 169 F. Supp. 348 (NJ 1958); *Lavello* v. *Danko*, 175 F. Supp. 92 (SDNY 1959); *Blumenthal* v. *United States*, 189 F. Supp. 439, 445 (ED Pa. 1960), aff'd, 306 F. 2d 16 (CA3 1962); *Pardonnet* v. *Flying Tiger Line, Inc.*, 233 F. Supp. 683 (ND Ill. 1964); *Kropp* v. *Douglas Aircraft Co.*, 329 F. Supp. 447, 453–455 (EDNY 1971). Cf. *D'Aleman* v. *Pan American World Airways*, 259 F. 2d 493 (CA2 1958).

[14] *Bergeron* v. *Aero Associates, Inc.*, 213 F. Supp. 936 (ED La. 1963); *Notarian* v. *Trans World Airlines, Inc.*, 244 F. Supp. 874 (WD Pa. 1965); *Horton* v. *J. and J. Aircraft, Inc.*, 257 F. Supp. 120 (SD Fla. 1966).

ously would have been performed by waterborne vessels.[15]

But a further extension of admiralty jurisdiction was created when courts began to sustain that jurisdiction in situations such as the one now before us—when the claim arose out of an aircraft accident that occurred on or over navigable waters *within* state territorial limits, and when the aircraft was not on a transoceanic flight. Apparently, the first such case grew out of a 1960 crash of a commercial jet, bound from Boston to Philadelphia, that collided with a flock of birds over the airport runway and crashed into Boston Harbor within one minute after takeoff. *Weinstein* v. *Eastern Airlines, Inc.*, 316 F. 2d 758 (CA3 1963). In deciding that a wrongful death action arising from this crash was within admiralty jurisdiction, the Court of Appeals for the Third Circuit applied the strict locality rule and found that the tort had a maritime locality. The court further justified the invocation of admiralty jurisdiction in that case by an analogy to the Death on the High Seas Act:

> "If, as it has been held, a tort claim arising out of the crash of an airplane beyond the one marine league line is within the jurisdiction of admiralty, then *a fortiori* a crash of an aircraft just short of that line but still within the navigable waters is within that jurisdiction as well." 316 F. 2d, at 765.

There have been a few subsequent cases to like effect.[16]

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[15] Whether this type of relationship to maritime commerce is a sufficient maritime nexus to justify admiralty jurisdiction over airplane accidents is discussed *infra*, at pp. 22–23. We do not decide that question in this case.

[16] *Hornsby* v. *The Fishmeal Co.*, 431 F. 2d 865 (CA5 1970); *Harris* v. *United States*, 275 F. Supp. 431, 432 (SD Ia. 1967). Cf. *Scott* v. *Eastern Airlines, Inc.*, 399 F. 2d 14, 21–22 (CA3 1968) (*en banc*).

To the contrary, of course, is the decision of the Court of Appeals for the Sixth Circuit in the present case.

III

These latter cases graphically demonstrate the problems involved in applying a locality alone test of admiralty tort jurisdiction to the crashes of aircraft. Airplanes, unlike waterborne vessels, are not limited by physical boundaries and can and do operate over both land and navigable bodies of water. As Professor Moore has stated, "In both death and injury cases, . . . it is evident that while distinctions based on locality often are in fact quite relevant where water vessels are concerned, they entirely lose their significance where aircraft, which are not geographically restrained, are concerned." 7A Moore, Federal Practice, Admiralty ¶ .330 [5]. In flights within the continental United States, which are principally over land, the fact that an aircraft happens to fall in navigable waters, rather than on land, is wholly fortuitous. The ALI Study, *supra*, in criticizing the *Weinstein* decision, observed:

> "If a plane takes off from Boston's Logan Airport bound for Philadelphia, and crashes on takeoff, it makes little sense that the next of kin of the passengers killed should be left to their usual remedies, ordinarily in state court, if the plane crashes on land, but that they have access to a federal court, and the distinctive substantive law of admiralty applies, if the wrecked plane ends up in the waters of Boston Harbor." ALI Study, *supra*, at 231.[17]

Moreover, not only is the locality test in such cases wholly adventitious, but it is somtimes almost impossible

[17] See also Comment, Admiralty Jurisdiction: Airplanes and Wrongful Death in Territorial Waters, 64 Colum. L. Rev. 1084, 1091–1092 (1964).

to apply with any degree of certainty. Under the locality test, the tort "occurs" where the alleged negligence took effect, *The Plymouth, supra, Smith & Son, Inc.* v. *Taylor, supra;* and in the case of aircraft that locus is often most difficult to determine.

The case before us provides a good example of these difficulties. The petitioners contend that since their aircraft crashed into the navigable waters of Lake Erie and was totally destroyed when it sank in those waters, the locality of the tort, or the place where the alleged negligence took effect, was there. The fact that the major damage to their plane would not have occurred if it had not landed in the lake indicates, they say, that the substance and consummation of the wrong took place in navigable waters. The respondents, on the other hand, argue that the alleged negligence took effect when the plane collided with the birds—over land. Relying on cases such as *Smith & Son, Inc.* v. *Taylor, supra,* where admiralty jurisdiction was denied in the case of a longshoreman struck by a ship's sling while standing on a pier, and knocked into the water, the respondents contend that a tort "occurs" at the point of first impact of the alleged negligence. Here, they say, the cause of action arose as soon as the plane struck the birds; from then on, the plane was destined to fall, and whether it came down on land or water should not affect "the locality of the act." See *Thomas* v. *Lane, supra,* at 960.

In the view we take of the question before us, we need not decide who has the better of this dispute. It is enough to note that either position gives rise to the problems inherent in applying the strict locality test of admiralty tort jurisdiction in aviation accident cases. The petitioners' argument, if accepted, would make jurisdiction depend on where the plane ended up—

a circumstance which could be wholly fortuitous and completely unrelated to the tort itself. The anomaly is well illustrated by the hypothetical case of two aircraft colliding at a high altitude, with one crashing on land and the other in a navigable river. If, on the other hand, the respondents' position were adopted, jurisdiction would depend on whether the plane happened to be flying over land or water when the original impact of the alleged negligence occurred. This circumstance, too, could be totally fortuitous. If the plane in the present case struck the birds over the Cleveland Lakefront Airport, admiralty jurisdiction would not lie; but if the plane had just crossed the shoreline when it struck the birds, admiralty jurisdiction would attach, even if the plane were then able to make it back to the airport and crash land there. These are hardly the types of distinctions with which admiralty law was designed to deal.

All these and other difficulties that can arise in attempting to apply the locality test of admiralty jurisdiction to aeronautical torts are, of course, attributable to the inherent nature of aircraft. Unlike waterborne vessels, they are not restrained by one-dimensional geographic and physical boundaries. For this elementary reason, we conclude that the mere fact that the alleged wrong "occurs" or "is located" on or over navigable waters—whatever that means in an aviation context—is not of itself sufficient to turn an airplane negligence case into a "maritime tort." It is far more consistent with the history and purpose of admiralty to require also that the wrong bear a significant relationship to traditional maritime activity. We hold that unless such a relationship exists, claims arising from airplane accidents are not cognizable in admiralty in the absence of legislation to the contrary.

IV

This conclusion, however, does not end our inquiry, for there remains the question of what constitutes, in the context of aviation, a significant relationship to traditional maritime activity. The petitioners argue that any aircraft falling into navigable waters has a sufficient relationship to maritime activity to satisfy the test. The relevant analogy, they say, is not between flying aircraft and sailing ships, but between a downed plane and a sinking ship. Quoting from the *Weinstein* opinion, they contend: "When an aircraft crashes into navigable waters, the dangers to persons and property are much the same as those arising out of the sinking of a ship or a collision between two vessels." 316 F. 2d, at 763. The dissenting opinion in the Court of Appeals in the present case made the same argument:

> "I believe that there are many comparisons between the problems of aircraft over navigable waters and those of the ships which the aircraft are rapidly replacing. . . . Problems posed for aircraft landing on, crashing on, or sinking into navigable waters differ markedly from landings on land. . . . In such instances, wind and wave and water, the normal problems of the mariner, become the approach or survival problems of the pilot and his passengers. . . . What I would hold is that tort cases arising out of aircraft crashes into navigable waters are cognizable in admiralty jurisdiction even if the negligent conduct is alleged to have happened wholly on land." 448 F. 2d, at 163.

We cannot accept that definition of traditional maritime activity. It is true that in a literal sense there may be some similarities between the problems posed for a plane downed on water and those faced by a sinking ship. But the differences between the two modes

of transportation are far greater, in terms of their basic qualities and traditions, and consequently in terms of the conceptual expertise of the law to be applied.[18] The law of admiralty has evolved over many centuries, designed and molded to handle problems of vessels relegated to ply the waterways of the world, beyond whose shores they cannot go. That law deals with navigational rules—rules that govern the manner and direction those vessels may rightly move upon the waters. When a collision occurs or a ship founders at sea, the law of admiralty looks to those rules to determine fault, liability, and all other questions that may arise from such a catastrophe. Through long experience, the law of the sea knows how to determine whether a particular ship is seaworthy, and it knows the nature of maintenance and cure. It is concerned with maritime liens, the general average, captures and prizes, limitation of liability, cargo damage, and claims for salvage.

Rules and concepts such as these are wholly alien to air commerce, whose vehicles operate in a totally different element, unhindered by geographical boundaries and exempt from the navigational rules of the maritime road. The matters with which admiralty is basically concerned have no conceivable bearing on the operation of aircraft, whether over land or water. Indeed, in contexts other than tort, Congress and the courts have recognized that, because of these differences, aircraft are not subject to maritime law.[19] Although dangers of wind and wave faced by a plane that has crashed on navigable waters may be superficially similar to those encountered by a sinking ship, the plane's unexpected

[18] Moreover, if the mere happenstance that an aircraft falls into navigable waters creates a maritime relationship because of the maritime dangers to a sinking plane, then the maritime relationship test would be the same as the petitioners' view of the maritime locality test, with the same inherent fortuity.

[19] See p. 13, *supra*.

descent will almost invariably have been attributable to a cause unrelated to the sea—be it pilot error, defective design or manufacture of airframe or engine, error of a traffic controller at an airport, or whatever; and the determination of liability will thus be based on factual and conceptual inquiries unfamiliar to the law of admiralty. It is clear, therefore, that neither the fact that a plane goes down on navigable waters nor the fact that the negligence "occurs" while a plane is flying over such waters is enough to create such a relationship to traditional maritime activity as to justify the invocation of admiralty jurisdiction.

We need not decide today whether an aviation tort can ever, under any circumstances, bear a sufficient relationship to traditional maritime activity to come within admiralty jurisdiction in the absence of legislation.[20] It could be argued, for instance, that if a plane flying from New York to London crashed in the mid-Atlantic, there would be admiralty jurisdiction over resulting tort claims even absent a specific statute.[21]

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[20] Of course, under the Death on the High Seas Act, a wrongful death action arising out of an airplane crash on the high seas beyond a marine league from the shore of a State may clearly be brought in a federal admiralty court.

[21] But see 7A Moore, Federal Practice, Admiralty ¶ .330 [5]:

"What possible rational basis is there, for instance, in holding that the personal representative of a passenger killed in the crash of an airplane traveling from Shannon, Ireland to Logan Field in Boston has a cause of action within the admiralty jurisdiction if the plane goes down three miles from shore; may have a cause of action within the admiralty jurisdiction if the plane goes down within an area circumscribed by the shore and the three-mile limit; and will not have a cause of action within the admiralty jurisdiction if the plane managed to remain airborne until reaching the Massachusetts coast? And this notwithstanding that in all instances the plane may have developed engine trouble or been the victim of pilot error at an identical site far out over the Atlantic."

An aircraft in that situation might be thought to bear a significant relationship to traditional maritime activity because it would be performing a function traditionally performed by waterborne vessels.[22] Moreover, other factors might come into play in the area of international air commerce—choice of forum problems, choice of law problems,[23] international law problems, problems involving multi-nation conventions and treaties, and so on.

But none of these considerations is of concern in the case before us. The flight of the petitioner's land-based aircraft was to be from Cleveland to Bangor, Maine, and thence to White Plains, New York—a flight which would have been almost entirely over land and within the continental United States. After it struck the flock of seagulls over the runway, the plane descended and settled in Lake Erie within the territorial waters of Ohio. We can find no significant relationship between such an event befalling a land-based plane flying from one point in the continental United States to another, and traditional maritime activity involving navigation and commerce on navigable waters.

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[22] Apart from transoceanic flights, the Government's brief suggests that another example where admiralty jurisdiction might properly be invoked in an airplane accident case on the ground that the plane was performing a function traditonally performed by waterborne vessels, is shown in *Hornsby* v. *The Fishmeal Co.*, 431 F. 2d 865 (CA5 1970), which involved the mid-air collision of two light aircraft used in spotting schools of fish and the crash of those aircraft into the Gulf of Mexico within one marine league of the Louisiana shore.

[23] In such a situation, Professor Moore states,

"Were maritime law not applicable, it is argued that recovery would depend upon a confusing consideration of what substantive law to apply, *i. e.*, the law of the forum, the law of the place where each decedent [or injured party] purchased his ticket, the law of the place where the plane took off, or, perhaps, the law of the point of destination." 7A Moore, Federal Practice, Admiralty ¶ .330 [5].

Just last Term, in *Victory Carriers, Inc.* v. *Law*, 404 U. S. 202, 212 (1971), we observed that in determining whether to expand admiralty jurisdiction, "we should proceed with caution . . . ." Quoting from *Healy* v. *Ratta*, 292 U. S. 263, 270 (1934), we stated:

> "The power reserved to the states, under the Constitution, to provide for the determination of controversies in their courts may be restricted only by the action of Congress in conformity to the judiciary sections of the Constitution. . . . Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which [a federal] statute has defined." *Ibid.*

In the situation before us, which is only fortuitously and incidentally connected to navigable waters and which bears no relationship to traditional maritime activity, the Ohio courts could plainly exercise jurisdiction over the suit,[24] and could plainly apply familiar concepts of Ohio tort law without any effect on maritime endeavors.[25]

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[24] There is no diversity of citizenship between petitioners and the City of Cleveland.

[25] The United States, respondent Dicken's employer, can be sued, of course, only in federal district court under the Federal Tort Claims Act, 28 U. S. C. §§ 1346 (b) and 2674. Such an action has been filed by the petitioners here, but even in that suit the federal court will apply the substantive tort law of Ohio. Thus, Ohio law will not be ousted in this case, and the pendency of the action under the Tort Claims Act has no relevance in determining whether the instant case should be heard in admiralty, with its federal substantive law.

The possibility that the petitioners would have to litigate the same claim in two forums is the same possibility that would exist if their plane had stopped on the shore of the lake, instead of going into the water, and is the same possibility that exists every time a plane goes down on land, negligence of the federal air traffic controller is alleged, and there is no diversity of citizenship. This problem

It may be, as the petitioners argue, that aviation tort cases should be governed by uniform substantive and procedural laws, and that such actions should be heard in the federal courts so as to avoid divergent results and duplicious litigation in multi-party cases. But for this Court to uphold federal admiralty jurisdiction in a few wholly fortuitous aircraft cases would be a most quixotic way of approaching that goal. If federal uniformity is the desired goal with respect to claims arising from aviation accidents, Congress is free under the Commerce Clause to enact legislation applicable to all such accidents, whether occurring on land or water, and adapted to the specific characteristics of air commerce.

For the reasons stated in this opinion we hold that, in the absence of legislation to the contrary, there is no federal admiralty jurisdiction over aviation tort claims arising from flights by land-based aircraft between points within the continental United States.[26]

The judgment is affirmed.

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cannot be solved merely by upholding admiralty jurisdiction in cases where the plane happens to fall on navigable waters.

[26] Some such flights, *e. g.*, New York City to Miami, Florida, no doubt involve passage over "the high seas beyond a marine league from the shore of any State." To the extent that the terms of the Death on the High Seas Act become applicable to such flights, that Act, of course, is "legislation to the contrary."